

ORDINANCE NO. 10-05

ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA AMENDING CHAPTER 18 ENTITLED "BUSINESSES" OF THE CODE OF ORDINANCES AND IN PARTICULAR, ARTICLE III ENTITLED "AMUSEMENT MACHINES", BY REVISING THE DEFINITIONS OF AMUSEMENT MACHINES TO CONFORM WITH STATE LAW; TRANSFERRING THE SOLE RESPONSIBILITY OF PROCUREMENT AND PAYMENT OF A BUSINESS TAX RECEIPT TO MACHINE OPERATOR; REQUIRING A DECAL TO BE AFFIXED TO EACH MACHINE; CREATING A REGULATORY FEE FOR THE FIRST FOUR TYPE II MACHINES AT EACH LOCATION; PROVIDING A LIMITED EXCEPTION TO THE PAYMENT OF THE CERTIFICATE OF AUTHORIZATION FEE FOR AMUSEMENT CENTERS; AND RENUMBERING OR RENAMING SECTIONS AND MISCELLANEOUS REVISIONS; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING PENALTIES FOR VIOLATION HEREOF; PROVIDING FOR INCLUSION IN CODE; PROVIDING FOR A SEVERABILITY CLAUSE AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, it is in the best interest of health, safety and general welfare of the community and the residents of the City of Hialeah to regulate the operation of coin-operated and currency-operated amusement machines within the City; and

WHEREAS, the purpose and intent of this ordinance is to narrow the definition of Type I and Type II amusement machines making it conform with State law and specifically to eliminate any misconstruction of the definition of the type of machines permitted as one expanding rights beyond the limitations imposed under the exception to gambling by State law; and

WHEREAS, the purpose and intent of this ordinance is to make changes to the fees and regulations for the adequate supervision of the operation of amusement machines within the City, and creating an exemption from certain regulation for bona fide amusement centers on proof of membership in good standing in a self-regulating industry association.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

Section 1: Chapter 18 entitled "Businesses" of the Code of Ordinances of the City of Hialeah, Florida, particularly Article III. Coin- or Currency-Operated Machines, is hereby amended to read as follows:

Chapter 18

BUSINESSES

* * *

**ARTICLE III.
AMUSEMENT MACHINES**

Sec. 18-61. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. However, nothing in this article may be construed contrary to state law.

Amusement center means a place of business having at least 50 or more amusement machines that are operated for the entertainment of the general public as a bona fide amusement facility.

Operator means any person who shall own, operate or control either a type I or type II amusement machine.

Type I Amusement machines: Any machine, contrivance or device that provides for the bona fide entertainment or amusement of the public ~~any kind~~ and that, ~~is set in motion or is permitted to function as a result of the~~ upon payment of a fee, money, compensation or an exchange of anything of value ~~or is permitted to function by~~ or insertion of a coin, slug, token, credit card or paper currency, the machine or device is set in motion, permitted to function or operate and that by application of skill, may entitle the person playing or operating the machine to:

(i) receive points or coupons that may be exchanged for merchandise only, (limited to noncash prizes, toys, or novelties, excluding cash, alcoholic

beverages, beer or wine), provided the cost value of the merchandise or prize awarded in exchange for such points or coupons does not exceed 75 cents on any game played, ~~or may entitle the person playing or operating the machine to~~

(ii) replay the game or device at no additional cost if the game or device can accumulate or react to no more than 15 replays, can be discharged of accumulated free replays only by reactivating the game or device for one additional play for such accumulated free replay, and can make no permanent record, directly or indirectly, of free replays.

This definition shall not be interpreted to include any game or machine that may be construed as a gambling device under state law. This definition excludes pinball machines, pool or billiard tables, vending machines, laundry machines, soda machines, kiddie rides, and automatic music machines.

Type II amusement machine means a Type I machine whose game content, theme, design, or graphics depict, exhibit, illustrate, describe or relate to sexual conduct or specified anatomical areas as defined in section 98-1796 of the Code, or whose game content, theme, design, or graphics simulates slot machines. This definition shall not be interpreted to include any game or machine that may be construed as a gambling device under state law.

* * *

Sec. 18-65. ~~Licensing system~~Business tax receipts and amusement machine decals.

One license business tax receipt for every all machines shall be issued to a business owner for at each location shall be issued in the name of the machine operator. and if the business owner and property owner is not the same person, tThe business owner at each location shall provide written notice to the property owner of its intention to operate the allow the operation of amusement machines within its business. for that location city Prior to the issuance of the business tax receipt, the machine operator shall provide the city a copy of the business owner's written notice to the property owner. prior to the issuance

~~of the license. All business tax receipts must be displayed within public view and access in an area within 5 feet from the physical site of the machine. Business tax receipts for amusement machines are not transferable from one machine operator to another. However, if a machine operator wishes to relocate an amusement machine covered under a current business tax receipt from one location to another, then the machine operator may submit a new application together with the corresponding transfer fee to change locations. A new business tax receipt will be issued identifying the new location of that machine and a corrected business tax receipt shall be issued reflecting the removal of the machine at the previous location. The name, address and telephone number of the machine operator must be attached to the front of the machine in a location easily read by machine users with the size of lettering equal to or greater than 12-point type. Prior to issuing a city business tax receipt, the machine operator must present a state amusement machine certificate from the department of revenue and an applicable county business tax receipt for each machine in operation at every location. In addition to a city business tax receipt, a decal will be issued for each machine. The decal must be permanently attached to each machine in a conspicuous place easily noticeable to anyone on first sight of the machine. For purposes of this subsection, each individual screen shall constitute one machine regardless of whether the screen is encased in a console, cabinet, or other fixture with other screens which receive electric power through one source or cord, and/or are set into motion or permitted to function through the use of one bill acceptor, where the player may select a game at any one screen such that at any one time you may have more than one player person playing or operating games at different screens independently from another the others. No artifice or scheme shall be used to circumvent the intent of this subsection. All licenses must be displayed within public view and access in area within 5 feet from the physical site of the machine. Amusement machine licenses are not transferable. If an amusement machine is relocated, then a new license shall be obtained. The name, address and telephone number of the machine owner must be attached to the front of the machine in a location easily read by machine users with the size of lettering equal to or greater than 12 point type. Prior to issuing a machine city license (business tax receipt) to a business owner, the~~

~~business owner must present proof a state amusement machine certificate from the department of revenue and an applicable county business tax receipt.~~

Sec. 18-66. Type II amusement machines, limitations.

Operators of type II amusement machines are subject to the following limitations in addition to those imposed by state law:

(a) There shall be no more than four type II amusement machines in any permissible business location or site, except as provided ~~in~~ for amusement centers, bingo parlors, or carnivals. The computation of the number of machines shall include counter amusement machines and standing amusement machines.

Sec. 18-667. License ~~r~~Revocation of certificate of authorization and business tax receipt.

If the person to whom a ~~license~~business tax receipt or certificate of authorization has previously been issued under this article shall thereafter be convicted or plead guilty or nolo contendere to any felony involving gambling, fraud, theft, controlled substances, or a violation of any criminal law, including misdemeanors, involving gambling or the sale, transportation, distribution or use of amusement machines or gambling machines, the ~~license~~ certificate or business tax receipt shall immediately thereafter be revoked by the city council after a public hearing, notice of which shall be served in writing upon the ~~licensee~~ certificate or business tax receipt holder at least 15 days before the date set for the hearing, if the public hearing establishes that the facts set forth in this section requiring a revocation of the ~~license~~ certificate or business tax receipt do indeed exist.

Sec. 18-68. Minors prohibited from playing certain machines.

(a) Type II amusement machines shall each bear a sticker, at least three inches in diameter, which clearly and legibly says "play prohibited by minors."

(b) It shall be the responsibility of the ~~licensee~~ machine operator to ensure that minors are prohibited from playing

such machines at all times. Failure of the ~~licensee~~ machine operator to monitor and prohibit play by minors of such designated machines shall be sufficient cause to subject the ~~licensee~~ machine operator to revocation of ~~his or her~~ the ~~license~~ certificate of authorization or business tax receipt under this article.

Sec. 18-69. Gambling.

No ~~person or operator licensed~~ authorized under this article, business owner, or any other person shall permit any type I amusement machine or type II amusement machine to be used for gambling or games of chance so as to be in violation of F.S. ch. 849.

Sec. 18-~~71~~70. Seizure of machines.

(a) If any ~~license fee or business tax receipt~~ required by this article is not paid by any operator or if ~~unlicensed~~ unauthorized machines are placed within the city, authority is given and granted to the licensing administrator to seize any of the operator's machines for such payment. After diligent search, the licensing administrator shall notify the owner, bona fide lien-holder and person in possession of the machine or machines at the time of seizure. Notice provided by certified mail must be mailed within 14 days after the seizure and must identify the procedure necessary to release the seized machine or machines. No machines so seized shall be released until the ~~license fee or business tax receipt~~ and all storage and hauling and all other expenses have been paid in full. The hauling fee shall be \$125.00 for each machine and the storage fee shall be \$10.00 for each day for each machine in storage.

(b) When a type I or type II amusement machine seized pursuant to subsection (a) of this section has not been claimed by the owner thereof within 90 days from the date of such seizure, title to the unclaimed machine shall vest in the city. The city may elect to donate the machine to a charitable organization, sell or otherwise dispose of the machine. If the licensing administrator elects to sell any such machine at public sale, the city shall provide at least ten days' notice of the proposed sale date in writing to the owner, if the owner can be found, and advertise once in a newspaper of general circulation in the city. All proceeds

of the sale shall be credited to the general fund of the city and shall offset the fees, costs, and storage owed by the owner of the machines.

Sec. 18-7271. Hours of operation in industrial-zoned properties.

Type I or type II amusement machines shall operate only between the hours of 7:00 a.m. and 9:00 p.m. within properties that are zoned industrial. If a type I or type II amusement machine is found to operate on the premises of a business outside of the permitted hours of operation, then the business shall cease operations after 9:00 p.m. and before 7:00 a.m. The city shall enforce this limitation of the hours of operation through a cease and desist order issued by the license administrator or the police chief, acting on behalf of the license administrator, immediately after the order is posted on the premises.

Sec. 18-7372. Payment of certificate of authorization and per machine fee for Type II machines; payment and performance bond; criminal background check and proof of corporate good standing for machine operator owner or supplier hereunder of type II amusement machines.

A machine operator owner or supplier of a type II amusement machine shall obtain:

(i) a certificate of authorization from the city as a non-exclusive franchise for one year by submitting a payment of ~~certificate of authorization~~ a fee of \$2,500.00;

(ii) a payment and performance bond, letter of credit, cash or other security acceptable to the city in the amount of \$10,000.00 with the city as the obligee; and

(iii) shall pay a fee of \$600.00 for each of the first four type II amusement machines at each location.

An amusement center is excused from the payment of the certificate of authorization fee under subsection (i) and payment of or proof of the \$10,000.00 security deposit under subsection (ii) above, provided that the amusement center is a member in good standing of a state or regional arcade or amusement center association in Florida that adopts and enforces bylaws, rules, regulations, and/or a

code of ethics and standards that focus on compliance with state law and foster good business practices and actively supervises the lawful operation of their member's amusement centers monitoring compliance with the requirements of state law and the association's bylaws, rules, regulations and/or code of ethics and standards and disciplining its members by imposing corresponding penalties for violations. Amusement center operators must provide proof of membership in good standing, copy of the association's bylaws, rules, regulations, and/or code of ethics, and a copy of the association's disciplinary standards, procedures, and penalties. The amusement center must consent to the disclosure of any and all records relating to disciplinary actions taken by the association against it for violations of the association's bylaws, rules, regulations, and/or code of ethics and standards. ~~bond or security requirement provided herein. An amusement center at one location shall receive a credit for the authorization fee if the amusement center pays a business tax receipt for that location in an amount equal to or in excess of \$9,000.00.~~

Certificates of authorization shall be issued only to corporations in good standing and registered to do business in Florida, limited liability companies in good standing, partnerships in good standing, limited liability partnerships in good standing or limited liability limited partnerships in good standing or individuals. Certificates of authorization shall only be issued to a corporation or partnership where all corporate officers and directors, or partners, as the case may be, and by all stockholders who own, hold or control five percent or more of issued and outstanding stock in the corporation or beneficial interest therein, or individual owners, upon a criminal background check paid by the license certificate-holder reveal that such officers, directors or stockholders of a corporation or corporate general partner; or partners of a partnership within the last five years preceding the application date or renewal date for a certificate of authorization hereunder have not committed a felony or pled guilty or no contest to a felony involving gambling, fraud, theft, or controlled substances; or violation of any criminal law, including misdemeanors, involving the sale, distribution or use of amusement machines or gambling machines. Each year, the machine operator shall provide proof of the renewal or new bond,

~~must be provided to the city and a certificate of status from the Florida department of state, and submission of a background check as described above, and payment of all fees. In addition to the submission of a criminal background check, amusement centers must provide a certificate of good status from the Florida department of state, a certificate of membership in good standing from the industry association, and payment of the fee for each machine pursuant to subsection (iii). If the machine owner and supplier is the same person or entity, only one fee shall be paid and one bond shall be submitted accordingly. If the machine owner and supplier are different people or entities and the machine supplier, but not the machine owner, intends to lease, place or cause to be placed type II amusement machines within the city, then only the machine supplier shall obtain the certificate of authorization and comply with the requirements herein.~~

Sec. 18-7473. Additional penalty.

(a) In addition to penalties provided in this code, no type I or type II amusement machine shall operate at a particular business location or site for one year from the date of the court order, order of the city council, code enforcement board or special master that determines or upholds that a business owner ~~of the~~ at any location, or machine operator; ~~machine owner or supplier of such amusement machine places, operates, allows to be operated, or causes to be placed or operated, such an amusement machine at that particular location or site in violation of sections 18-63, 18-64, 18-65, 18-66, 18-68, 18-7271 and 18-7372.~~

(b) In addition to penalties provided in this code, no business shall operate at a particular business location or site for one year from the date of the court order, order of the city council, code enforcement board or special master that determines or upholds that a business owner of the location, or machine operator; ~~machine owner or supplier of such amusement machine places, operates, allows to be operated, or causes to be placed or operated, such an amusement machine at that particular location or site in violation of section 18-69.~~

~~(c) In addition to penalties provided in this code, no business shall operate at a particular business location or~~

~~site for one year from the date of the court order, order of the city council, code enforcement board or special master that determines or upholds that a business of the location, operator, machine owner or supplier of such amusement machine places, operates, or causes to be placed or operated, such amusement machine at that particular location or site in violation of section 18-69.~~

Section 2: Repeal of Ordinances in Conflict.

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 3: Penalties.

Every person violating any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be assessed a civil penalty not to exceed \$500.00 within the discretion of the court or administrative tribunal having jurisdiction. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty described above, the City may pursue other remedies such as abatement of nuisance, injunctive relief, administrative adjudication and revocation of licenses or permits.

Section 4: Inclusion in Code.

The provisions of this ordinance shall be included and incorporated in the Code of Ordinances of the City of Hialeah, as an addition or amendment thereto, and the sections of this ordinance shall be renumbered, as appropriate, to conform to the uniform numbering system of the Code.

Section 5: Severability Clause.

If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent

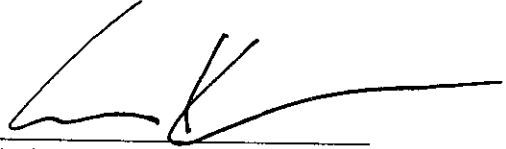
jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

Section 6: Effective Date.

This ordinance shall become effective when passed by the City Council and signed by the Mayor or at the next regularly scheduled City Council meeting, if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto.

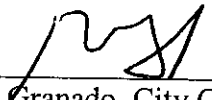
PASSED AND ADOPTED this 26th day of January, 2010.

THE FOREGOING ORDINANCE
OF THE CITY OF HIALEAH WAS
PUBLISHED IN ACCORDANCE
WITH THE PROVISIONS OF
FLORIDA STATUTE 166.041
PRIOR TO FINAL READING.


Carlos Hernandez
Council President

Attest:

Approved on this 28 day of January, 2010.


Rafael E. Granado, City Clerk


Mayor Julio Robaina

Approved as to form and legal sufficiency:


William M. Grodnick, City Attorney

~~Strikethrough indicates deletion.~~ Underline indicates addition.

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Ordinance was adopted by a 6-0 vote with Councilmembers, Caragol, Casals-Muñoz, Cue, Garcia-Martinez, Gonzalez, Yedra voting "Yes", Councilmember Hernandez absent.